

DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMS

What is a disability-related inquiry?

A disability-related inquiry is a question that will probably bring forth disability-related information. Questions may include the following:

- Asking about a history of disability
- Asking about workers' compensation history
- Asking what medication an applicant or employee is taking
- Asking family members or coworkers about an employee's disability status
- Asking about an applicant's or employee's genetic history

When may employers make disability-related inquiries?

Disability-related inquiries may only be made *after a conditional job offer has been made*.

- If a person is decided unfit for the job as a result of questioning, the employer must show that he or she poses a "direct threat".
- This is the only time questions may be asked about workers' compensation claims or past injuries.
- Once the person is hired, disability-related inquiries may no longer be made.

May affirmative action employers make disability-related inquiries?

Employers may ask applicants to *voluntarily* identify themselves as a person with a disability for affirmative action purposes in two cases:

1. When the federal, state, or local government requires the employer to have an affirmative action program.
2. When the employer voluntarily has created an affirmative action program.

What is a medical exam?



A potential employer may not require an applicant to take a medical exam *before a conditional job offer has been made*.

Use the following

measures to distinguish a medical exam from other questioning:

- Is it administered by a medical professional or someone trained by a medical professional?
- Are the results interpreted by a medical professional or someone trained by a medical professional?
- Is the purpose to disclose a disability or physical or mental status?
- Does it measure the applicant's performance of or physiological response to performing a task?
- Is the test invasive?
- Is it normally given in a medical setting?
- Is medical equipment used?

What is not a medical exam?

- A test for *illegal* drugs
- A physical fitness test
- Psychological testing
- Polygraph test (some federal and state laws ban employers from giving polygraph tests)

It *is legal* for a potential employer to ask an applicant to perform these types of tests *before* making a job offer, because they are not medical exams.

May employers make conditional job offers based on medical exams?

- A job offer may be conditional on passing a medical exam only if *all* potential employees in the same category are required to take the exam.

- Post-job offer medical exams may disqualify a job candidate if they show them to be a “direct threat.”
- If an applicant is not hired because of medical exam results, the reasons *must* be job-related. The employer must be able to prove that they could not provide reasonable accommodations that would allow the individual to perform the essential functions of the job.
- The exam itself does *not* have to be job-related or necessary for business at this time.

When may employers require a current employee to take a medical exam?

- Medical exams *must* be job-related.
- Employers may only terminate an employee based on a medical exam if it shows the employee cannot perform his or her essential job functions and/or he or she is a direct threat even with reasonable accommodations.

How may employers get medical information for emergency evacuation purposes?

Employers may identify people who may need assistance in the case of an emergency in three ways:

1. After making a job offer, a potential employer may ask an applicant if they will need assistance in the case of an emergency.
2. An employer may periodically ask its employees to *voluntarily* self-identify if they will need assistance in the case of an emergency.
3. An employer may ask employees with known disabilities if they will require assistance, and what type of assistance they will require, in the case of an emergency.

While medical information is still confidential, an employer may share it with safety or first aid persons in the case of an emergency.

May employers test for illegal drug use?

Yes, employers may test employees for *illegal* drugs.

- *Current* users of illegal drugs are not protected by the ADA.
- Employers *cannot* ask about any history of illegal drug use or drug rehabilitation. Former users of illegal drugs who have been *successfully* rehabilitated are protected.

- Any *legal* drugs or other medical information found while testing for illegal drugs must remain confidential.

When may employers test for alcohol use?

Employers may maintain and enforce policies about alcohol in the workplace.

- Employers may conduct alcohol testing if they have reason to believe an employee is under the influence of alcohol.
- Employers may ask employees, “Have you been drinking?” They may *not* ask questions about current or past drinking habits.
- Alcoholism is considered a disability under the ADA.

Does medical information stay confidential?

- All medical information must go in a *separate* file, not the employee’s regular personnel file.
- Confidentiality regarding medical information holds, even if an applicant does not get the job.
- Confidentiality stays in place after an employee has left the position.

About Our Organization

Northwest ADA Center provides technical assistance, information, and training regarding the ADA from the regional office in Washington State and affiliates in Alaska, Idaho, and Oregon. Specialists are available to answer specific questions pertaining to all titles of the ADA and accessibility of the built environment. Training staff offer presentations to businesses, organizations, schools, people with disabilities, and the general public.

Northwest ADA Center

800-949-4232 ♦ www.nwadacenter.org

Resources

Equal Employment Opportunity Commission/
Dept. of Justice, Civil Rights Division
<http://www.ada.gov/qandaeng.htm>
EEOC: 800-669-4000 (Voice), 800-669-6820 (TTY)

The Job Accommodation Network (JAN)
800-526-7234, www.askjan.org



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